

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company (U904G) for Authority to Increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Years 1994 and 1997, and Low-Income Program Years 2002 and 2003 in the 2004 Annual Earnings Assessment Proceeding ("AEAP").

Application 00-05-002  
(Filed May 1, 2000)

And Related Matters.

Application 00-05-003  
Application 00-05-004  
Application 00-05-005  
Application 01-05-003  
Application 01-05-009  
Application 01-05-017  
Application 01-05-018  
Application 02-05-002  
Application 02-05-003  
Application 02-05-005  
Application 02-05-007  
Application 03-05-002  
Application 03-05-003  
Application 03-05-004  
Application 03-05-009  
Application 04-05-005  
Application 04-05-008  
Application 04-05-010  
Application 04-05-012

## **OPINION DENYING REQUEST OF WOMEN'S ENERGY MATTERS FOR INTERVENOR COMPENSATION**

### **I. Introduction and Summary**

In this proceeding, the Commission consolidated the 2000 through 2004 Annual Earnings Assessment Proceedings (AEAPs) to address the earnings claims of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southern California Edison Company (SCE) for energy efficiency activities initiated and/or completed over the 1999-2003 period, and related issues.<sup>1</sup> This consolidated proceeding is closed.

The Commission issued the following decisions in this proceeding:

- Decision (D.) 03-08-028 addressed earnings claims for low income energy efficiency (LIEE) programs, in which the Commission authorized partial awards for the pending claims. The Commission directed Energy Division to verify LIEE installations for 2000 and expenditure data for 1999-2001 for further Commission consideration.
- D.03-10-041 established requirements for contracting and administration of the impact evaluations related to 2002 LIEE programs.
- D.03-10-057 determined that the shared-savings incentive mechanism adopted in D.94-10-059 for energy efficiency programs should not be reopened for reconsideration.
- D.05-09-039 addressed the reasonableness of utility administrative costs associated with interruptible load and

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<sup>1</sup> PG&E, SCE, SoCalGas, and SDG&E are referred to collectively as “the utilities” in this decision.

rotating outages programs, which the Commission directed be evaluated and audited by Energy Division in the AEAPs.

- D.05-10-041 adopted settlement agreements for all of the utilities for pending earnings claims associated with energy efficiency activities, and closed this proceeding.

On December 27, 2005, Women's Energy Matters (WEM) filed a request for compensation (Request) for substantial contribution to D.03-08-028, D.03-10-041, D.03-10-057, and D.05-10-041. WEM requests a total of \$60,195.00 for its participation. The four impacted utilities filed a joint response on January 26, 2005, recommending that WEM's request be denied. This decision finds that WEM did not make a substantial contribution to the Commission's determinations in this proceeding, and denies the Request.

## **II. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable and are based on hourly rates comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

### **III. Procedural Issues**

As noted in WEM’s Request, the 2000-2004 AEAP proceedings were consolidated in various stages (and by different assigned Administrative Law Judges (ALJs)) over the 2001-2004 period. WEM filed its initial NOI on July 11, 2001 in the 2000/2001 consolidated AEAP. ALJ Walwyn denied this NOI without prejudice for failure to qualify as a customer, noting the denial would not preclude WEM from filing a later NOI under a different definition of customer eligibility. WEM filed a subsequent NOI on November 20, 2001 and was found by ALJ Walwyn in a ruling dated December 21, 2001 to be eligible as a customer to request compensation. ALJ Walwyn directed WEM to make its showing of financial hardship in its request for compensation. We affirm ALJ Walwyn’s ruling.

WEM filed its Request within 60 days of D.05-10-041 being issued. As described above, this decision addressed settlement agreements between each of the utilities and the Office of Ratepayer Advocates (now the Division of Ratepayer Advocates) on the utilities' earnings claims that had not yet been resolved in the proceeding. D.05-10-041 also closed this consolidated proceeding.

WEM also is requesting compensation for time spent on the issues resolved in previous decisions in this consolidated proceeding, i.e., D.03-08-028, D.03-10-041, and D.03-10-057. For the purpose of intervenor compensation, Rule 76.72 of the Commission's Rules of Practice and Procedure (Rules) defines "final order or decision" as an order or decision that "resolves an issue on which the customer believes it made a substantial contribution or the order or decision closing the proceeding." WEM has elected to submit its Request for all issues and phases of this proceeding within 60 days of the decision closing this consolidated proceeding, and therefore we find that WEM's Request is timely.

Finally, with respect to other procedural issues, we note that WEM complied with ALJ Walwyn's direction to make its showing of financial hardship in its Request, and we find it meets the requirements of § 1802(g).

In sum, we find that WEM has satisfied all the procedural requirements necessary to make its Request in this consolidated proceeding.

#### **IV. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party,

did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>2</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions WEM made in this proceeding.

In D.03-08-028, the Commission adopted shareholder incentives for the utilities for their 1998 LIEE programs and established procedures for further consideration of later LIEE earnings claims and the reasonableness of administrative costs incurred for interruptible load programs. WEM asserts that the decision responds directly to WEM's input in the proceeding. However, the

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<sup>2</sup> D.98-04-059, 79 CPUC 2d, 628 at 653.

decision's discussion (*mimeo.* at page 21) of WEM's contribution contradicts this assertion:

Finally, with regard to WEM's position regarding LIEE earnings claims, we note that the assigned ALJ afforded WEM along with other interested parties the opportunity to provide comment on "any additional technical or factual issues related to the specific claims submitted by the utilities under the LIEE shareholder mechanisms in place." As the ALJ has noted, WEM instead presented a series of very general accusations about program details that, if true, would be properly raised in proceedings examining the best way to deliver the programs, and not the AEAP proceeding. We advise WEM to focus its participation during future phases of this consolidated AEAP on the specific issue before us for consideration. [Footnotes omitted.]

WEM also asserts that its participation in this proceeding contributed to D.03-10-041, in which the Commission established requirements for contracting and administration of the impact evaluations related to 2002 LIEE programs. However, these requirements were developed by the Commission on its own initiative, in consultation with the Assigned Commissioner, ALJ, and Energy Division staff. There is no indication that WEM participated in the submission of pleadings leading up to the draft decision,<sup>3</sup> nor did it file comments on the draft decision. In short, there is no merit to WEM's assertion that it contributed substantially to the Commission's determinations on these contracting matters.

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<sup>3</sup> In its Request, WEM refers to a December 2, 2002 motion that it filed regarding consulting/auditing conflicts as evidence of its contribution to the Commission's determinations in D.03-10-041. We note that WEM's Motion was filed in a different Commission proceeding (R.01-08-028), addressed non-LIEE evaluation studies and was denied by the ALJ in a ruling dated March 19, 2003.

In D.03-10-057, the Commission addressed whether the shared-savings incentive mechanism adopted in D.94-10-059 for non low-income energy efficiency programs should be reopened. WEM argued that the incentive mechanism should be reopened and eliminated. In its Request, WEM alleges that despite the fact that the Commission did not adopt its position, it still made a substantial contribution to the debate.

We disagree. In D.03-10-057, the Commission established the legal standard for considering whether to rescind or modify the shared-savings incentive mechanism adopted in D.94-10-059, and then evaluated the positions of the parties in the context of that standard. As discussed in D.03-10-057, WEM submitted a single set of comments that quoted extensively from the testimony and briefs that The Utility Reform Network (TURN) submitted in opposition to incentive mechanisms when the shared-savings mechanism was established by the Commission in the early 1990s. The Commission rejected WEM's position in a single paragraph:

We first turn to WEM's position. Although WEM does not refer to the legal standards discussed above, WEM argues that the Commission reached its determinations in D.94-10-059 under misconceptions of fact because it rejected TURN's position in that proceeding on several issues. We disagree. The Commission considered TURN's testimony during both the threshold and implementation phases of the proceeding, and concluded that it was not persuasive. [Footnote omitted.] The fact that the Commission did not adopt a position that WEM apparently prefers is not a legitimate basis for reopening the proceeding.<sup>4</sup>

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<sup>4</sup> D.03-10-057, *mimeo.*, p. 17.

Finally, in D.05-10-041, the Commission adopted settlement agreements for all of the utilities for their outstanding AEAP shareholder incentive claims. WEM was the only party opposing any of the settlements. As discussed at some length in D.05-10-041, the Commission found that WEM's submittals in this proceeding were not responsive to the record, that WEM drew inappropriate conclusions from the data it referenced in those submittals, and that for these and other reasons WEM's arguments were without merit:

WEM submitted preliminary comment/testimony on September 4, 2001 in response to the utilities' 2000/2001 AEAP applications. We note that this submittal makes no individual recommendations regarding the appropriate level of those claims. Instead, much of it recounts conversations with Commission personnel detailing the difficulties WEM encountered because the Commission's filing system is kept by application and advice letter number, and not by subject matter. The rest of the submittal consists of (1) quotes from a 15-year old book about the complexities of the regulatory process, (2) references to other intervenors in past program planning proceedings, raising program issues in those proceedings, and (3) accusations concerning the utilities' handling of energy efficiency funds and other matters. PG&E filed a point by point response to WEM's submittals on September 28, 2001. We concur with PG&E's assessment that WEM's September 4 2001 submittal is not responsive to the issues in this proceeding and has not contributed to the record. We find WEM's November 16, 2001 comments on the utilities' supplemental testimony to be similarly unresponsive to the issues addressed in that testimony. Accordingly, we give these WEM submittals no weight in our deliberations over the settlement agreements before us today.<sup>5</sup>

WEM references the results of the 2003 Express Efficiency Program Evaluation to argue that the PG&E/ORR settlement relies upon

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<sup>5</sup> D.05-10-041, *mimeo.*, pp. 32-33.

savings and persistence data which “is already recognized as being inaccurate.” We note that this study was submitted to the Commission in March 2005, and covers installations made in program year 2003, for which there are no shareholder incentives. Hence, the settlement agreements being considered today do not include any earnings claims for the programs covered by this study. Moreover, we are persuaded by the arguments of ORA and PG&E that this study has very little relevance to the savings impacts of PG&E’s pre-1998 program activities.<sup>6</sup>

With respect to the recent DEER [Database for Energy Efficiency Resources] updates to non-CFL [compact florescent lamp] useful lives, we similarly find no basis for setting aside the record in this proceeding based on those updates, as WEM’s comments suggest . . . . Again, WEM draws inappropriate conclusions from the data.<sup>7</sup>

In sum, we find that WEM’s objection to the ORA/PG&E settlement agreement based on the results of recent 2003 program evaluations and DEER updates is without merit.<sup>8</sup>

. . . [W]e have reviewed the ORA/PG&E joint rebuttal to WEM’s comments, and agree with their assessment that WEM mischaracterizes the audit findings.<sup>9</sup>

In sum, contrary to WEM’s assertions, we find nothing in the audit findings to suggest that the ORA/PG&E settlement agreement is unreasonable and should be rejected by this Commission.<sup>10</sup>

In response to WEM’s comments on the draft decision, the Commission noted that WEM reargued the positions it had taken in this proceeding, as well as

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<sup>6</sup> *Ibid.*, p. 33.

<sup>7</sup> *Ibid.*, p. 36.

<sup>8</sup> *Ibid.*, p. 37.

<sup>9</sup> *Ibid.*, p. 42.

<sup>10</sup> *Ibid.*, p. 43.

in other energy efficiency-related proceedings, stating that it remained “unpersuaded” by WEM’s arguments:<sup>11</sup>

. . . WEM’s comments constitute no more than reargue of its previous positions during the proceeding. Accordingly, WEM’s comments do not comply with Commission Rule 77.3, which require that comments be limited to 15 pages and that there be no reargument of previous positions. As to the latter, Rule 77.3 provides that such comments “*will be accorded no weight and are not to be filed.*” (Emphasis added.)<sup>12</sup>

Moreover, the Commission went on to state:

WEM makes a number of unsupported and speculative allegations, of which the most egregious is WEM’s allegation that PG&E wrote parts of the draft decision. [Footnote omitted.] We reject these allegations as untrue, and thus, they have no merit. We note that such untrue, unsupported and speculative allegations could be considered disrespectful conduct. We remind WEM that in participating in Commission proceedings, a party is subject to requirements set forth in Rule 1 of the Commission’s Rules of Practice and Procedure, and a party must act accordingly. Any violation or violations of Rule 1 may subject a party to sanctions, including but not limited to, prohibiting a party from participating in a Commission’s proceeding, disallowing intervenor’s compensation for unreasonable conduct, rejecting pleadings, holding a party in contempt under Public Utilities Code Section 2113, and any other sanctions permitted under the law.<sup>13</sup>

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<sup>11</sup> *Ibid.*, p. 50.

<sup>12</sup> *Id.*

<sup>13</sup> *Ibid.*, pp. 50-51.

We conclude that WEM did not contribute substantially to the Commission's determinations in this proceeding and therefore deny WEM's Request.

#### **V. Reasonableness of Requested Compensation**

WEM requests \$60,195.00 compensation in this proceeding for the work of Barbara George, at a rate of \$150/hour. We previously approved this rate for George in D.05-01-007. However, since WEM did not make a substantial contribution in this proceeding, we make no finding on the reasonableness of the requested compensation had there been a substantial contribution.

#### **VI. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6), we waive the otherwise applicable 30-day comment period for this decision.

#### **VII. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner, and Meg Gottstein is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. WEM has met all the procedural requirements to claim compensation in this proceeding.
2. WEM did not substantially contribute to the Commission's determinations in D.03-08-028, D.03-10-041, D.03-10-057 or D.05-10-041, for the reasons stated herein.
3. The attached appendix summarizes today's decision.

### **Conclusions of Law**

1. Because WEM did not substantially contribute to the Commission's determinations in this proceeding, WEM has not fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. WEM's request for compensation should be denied.
3. The comment period should be waived, and today's order should be made effective immediately.
4. This consolidated proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The Request For Compensation For Substantial Contribution to Decision (D.) 03-08-028, D.03-10-041, D.03-10-057, and D.05-10-041 in this consolidated proceeding, filed by Women's Energy Matters on December 27, 2005 is denied.
2. The comment period for today's decision is waived.
3. Application (A.) 00-05-002, A.00-05-003, A.00-05-004, A.00-05-005, A.01-05-003, A.01-05-009, A.01-05-017, A.01-05-018, A.02-05-002, A.02-05-003, A.02-05-005, A.02-05-007, A.03-05-002, A.03-05-003, A.03-05-004, A.03-05-009, A.04-05-005, A.04-05-008, A.04-05-010, and A.04-05-012 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX

### Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0308028, D0310041, D0310057, and D0510041	
<b>Proceeding(s):</b>	A0005002 et al.	
<b>Author:</b>	ALJ Gottstein	
<b>Payer(s):</b>		

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Women's Energy Matters	12/27/2005	\$60,195.00	\$0	No	No substantial contribution

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Barbara	George	Expert	Women's Energy Matters	\$150	2001 – 2005	\$0

(END OF APPENDIX)